



BATTLING INTERNATIONAL BRIBERY

2003



The Fifth Annual Report on Enforcement and Monitoring of the OECD Convention on Combating Bribery of Foreign Public Officials in International Transactions as Required by Paragraph (c) (1) of the Senate Resolution of Advice and Consent dated July 31, 1998

United States Department of State
Bureau of Economic and Business Affairs



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Executive Summary

The Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Antibribery Convention) of the Organization of Economic Cooperation and Development (OECD) is one of the most important instruments through which the U.S. government fights transnational corruption. The Convention obligates the Parties to criminalize bribery of foreign public officials in the conduct of international business. It is aimed at proscribing offers, promises or payments of bribes by companies based in the OECD signatory countries that engage in transactions in other countries.

This fifth annual report under the Senate resolution of advice and consent to the International Anti-Bribery and Fair Competition Act of 1998 (IAFCA) examines the progress made by signatory countries to implement and enforce the OECD Antibribery Convention.

All 35 signatories have enacted legislation to implement the Convention and two-thirds of them have had these laws for over three years. We understand that several countries have foreign bribery investigations under way and that one or two countries may bring prosecutions in the future. However, except for the U.S. government, no other Party has prosecuted a case of bribery of a foreign public official under its implementing legislation and obtained a conviction. Since July 1, 2002, the U.S. government has instituted several enforcement actions.

In his videotaped remarks in May 2003 to participants at the Third Global Forum on Fighting Corruption and Safeguarding Integrity (Global Forum III) hosted by the government of South Korea, in Seoul, President George W. Bush stated:

“Fighting corruption is essential to meeting the great challenges of our times. Peace-loving people everywhere are confronting the forces of global terror. Societies on

every continent are striving for greater freedom and democracy, and more and more nations are building their prosperity through markets and trade. Corruption undermines all of these enterprises.”

At its annual summit held in June 2003 in Evian, France, the Group of Eight (G-8) adopted an initiative the United States had developed in coordination with the United Kingdom. The G-8 Declaration on Fighting Corruption and Improving Transparency proposes specific actions to reduce corruption and enhance transparency to ensure that development assistance achieves its intended purpose. The G-8 plan envisions a partnership between donor and recipient countries to change the incentives to make corruption less attractive to public officials and level the playing field for both citizens and businesses by exposing the economic and political costs of corruption and creating effective checks and balances on corrupt regimes. The Declaration signals the importance of the OECD Antibribery Convention by calling for strengthened enforcement of the Convention and accelerated peer reviews of implementation.

In Monterey, Mexico in 2002, President Bush announced the U.S. government’s Millenium Challenge Account (MCA) as a development assistance program intended to help governments take serious action “to root out corruption, respect human rights and adhere to the rule of law.” The President made clear that progress in addressing corruption would be a key factor for qualifying for MCA assistance.

This report carries an important message: to make the Antibribery Convention effective, the focus of the OECD Working Group on Bribery must shift to promote enforcement. We are working closely with other countries to ensure a strong, well-financed mechanism for peer review of enforcement. With new anti-bribery laws in place, all Parties have the legal authority to investigate

allegations of foreign bribery and bring prosecutions, where appropriate. Because the investigation and prosecution of foreign bribery is different from pursuing domestic corruption cases, the Parties should accord priority to developing the special investigative skills and prosecutorial techniques required to enforce their national anti-bribery laws. The unique OECD Convention peer review system permits the Working Group on Bribery to monitor progress and make recommendations to help each Party improve its track record. This work is imperative if we are to maintain the credibility and effectiveness of the Convention as a tool to combat bribery and corruption.

Major Findings

Meaningful progress continues in the implementation of the Convention.

- As of June 7, 2003, all 35 signatories had adopted laws to implement the Convention. Since our last report, Chile and Turkey completed this important task. The legislation of Ireland, reviewed in this report, appears to meet most of the obligations of the Convention, although we do have some concerns that relate to jurisdiction for the offense and sanctions. In addition, Ireland remains the only signatory that must still deposit its instrument of ratification with the OECD.

Some Parties (e.g., U.K., Japan, Slovak Republic, Hungary) have taken steps to correct some of the deficiencies identified by the OECD Bribery Working Group in their implementing legislation. Work by several of these Parties, and other Parties, remains to be undertaken and accomplished. In 2003 the U.K. introduced a new anti-corruption bill into Parliament and we understand Japan plans to make further amendments to its laws implementing the Convention.

U.S. government assessments of the implementing legislation of the twenty-nine countries reviewed in prior years, as well as more comprehensive background and resource material can be found in earlier reports available at www.export.gov/tcc.

As of June 7, 2003, the OECD Working Group on Bribery had completed two additional Phase II reviews of Parties' enforcement regimes; Germany and Iceland. This brings the total number of reviews completed to four. A review of Bulgaria was conducted in February of 2003; it will soon be completed. A review of Canada was undertaken at the June 2003 plenary session of the working group

and reviews of France and Norway are scheduled for October and December 2003, respectively.

To date, the Phase II review process has proceeded too slowly, primarily because the OECD Working Group on Bribery lacked the resources to accelerate the monitoring cycle. A very important achievement in the past year was to persuade our OECD partners to approve, for the first time in a decade, a substantial increase in OECD budget funding to support the Convention's Phase II peer review program. In addition, three OECD countries, including the U.S., made voluntary contributions for Phase II. The new funds will permit the OECD to devote additional resources to the monitoring of enforcement and increase the number of country reviews per year to 7 or 8. We now expect the Working Group on Bribery to be able to complete a first cycle of 35 country reviews of enforcement by the end of 2007, with the new funds.

We are encouraged by information coming to our attention that several Parties are pursuing allegations of bribery of foreign officials and that some prosecutions may be brought. We estimate that between May 1, 2002 and April 30, 2003, the competition for 40 contracts worth \$23 billion may have been affected by bribery by foreign firms of foreign officials. This is a noticeable drop from estimates for the previous five years, which averaged very close to 60 contracts each year. It is too early to attribute the drop to any specific cause. We will watch these developments very closely as we continue to encourage OECD Convention countries to enforce their domestic laws criminalizing foreign bribery.

Over the next year we will continue to strongly urge Parties to address all credible allegations of bribery of foreign public officials. When information is received relating to acts of bribery that may fall within the jurisdiction of other Parties to the Convention, the information will be forwarded, as appropriate, to national authorities for action.

We continue to believe that targeted expansion of the Antibribery Convention's membership could help eliminate bribery of foreign public officials in international business transactions. The United States continues to advocate a careful and deliberate approach to enlargement with a primary focus on attracting countries that are important global market players and whose accession to the Convention would bring significant mutual benefit.

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Introduction

Corruption poses a serious threat to collective security, democracy and sustainable development. It imposes enormous costs on countries and destabilizes critical rule of law institutions and market-based systems that underpin democracy throughout the world. Corruption distorts public policy, leads to the misallocation of resources, increases budgetary costs to governments, undermines the rule of law and particularly hurts the poor. It robs nations of their human and natural resources and is a tax on development. Corruption often facilitates criminal activities, such as drug trafficking and money laundering, and can fuel transnational crimes and social/political conflict that threaten regional as well as global security.

Reducing corruption and enhancing transparency are top United States government priorities because they are central to advancing our national security interests, supporting sustainable development and developing stable democracies. Transparency is a key component of domestic good governance and transparent systems are essential to build the trust of citizens, to create the necessary business climate, to stem corruption and to ensure that government revenues go to their intended purpose.

Fighting Corruption and Promoting Transparency

The United States has long been a leader in the international campaign to stop corruption by promoting transparency and strengthening judicial systems and rule of law. For that reason, we led efforts to launch negotiations in the Organization for Economic Cooperation and Development Convention on Combating Bribery of Foreign Public Officials in International Transactions (“the Anti-Bribery Convention”). Today, the Convention is one of many initiatives in regional and international fora aimed at combating the problem of corruption. It is considered the “gold standard” of instruments designed to eliminate transnational bribery and continues to serve as a model for such efforts.

Over the past year, the United States developed a new initiative in cooperation with the United Kingdom that was adopted by the Group of Eight (G-8) at its annual summit in Evian, France, in June of 2003. The G-8 Declaration on Fighting Corruption and Improving Transparency proposes specific actions to reduce corruption and enhance transparency as part of a strategy to ensure that development assistance resources and budget revenues achieve their intended purpose. It proposes an ambitious partnership between donor and recipient countries to change the incentives to make corruption less

attractive to public officials, level the playing field for citizens and businesses alike by exposing the economic and political costs of corruption, and institutionalizing effective checks and balances on corrupt regimes. The G-8 plan builds on actions for governments in developed and developing countries, in recognition of the need for all countries to take responsibility for fighting corruption.

The G-8 Declaration features a comprehensive set of commitments to work with developing countries to improve public financial management and transparency in government procurement and the awarding of concessions. We expect the International Financial Institutions and G-8 governments to contribute by providing technical assistance to help developing countries build the capacity to follow through on their commitments. The United States expects to begin implementing the new initiatives with a group of pilot countries that demonstrate the political commitment to promoting economic openness, fostering entrepreneurship, rooting out corruption, and moving forward on government reform. The G-8 Declaration specifically calls for action to:

- * Improve public financial management and accountability to ensure that public and donor resources are used effectively.
- * Strengthen enforcement of the OECD Antibribery Convention and accelerate peer reviews of implementation.
- * Deny safe haven to corrupt public officials and their assets.
- * Negotiate a UN anticorruption convention.
- * Fight financial abuses.
- * Promote Transparency in Government Procurement; and
- * Encourage governments and companies to develop and implement action plans to establish high standards of transparency with respect to all budget flows (revenues and expenditures) and with respect to the awarding of government contracts and concessions.

Including OECD Antibribery Convention enforcement in the G-8 Declaration sends a strong signal that developed country signatories recognize their responsibility to prevent their companies and citizens from exporting bribery and corruption to developing and emerging countries. The Convention is an important element of the G-8 initiative because it demonstrates that all governments have a crucial role to play in establishing and reinforcing the rule of law and holding companies ac-

countable for their actions when operating abroad. Stamping out corruption is a shared responsibility and will require the active engagement of all countries. Developing country representatives expressed support for the long-standing U.S. position to urge other signatory countries to implement and enforce the Antibribery convention.

Transparency, accountability and domestic good governance provide the foundation for many U.S. government foreign assistance programs, including the Millennium Challenge Account (MCA) announced in Monterey in 2002 and the Africa Growth and Opportunity Act. President Bush stated that the "MCA will reward nations that root out corruption, respect human rights, and adhere to the rule of law." The President made clear that progress in addressing corruption would be one of several grounds for qualifying as an MCA recipient country.

To reinforce the message of government responsibility to combat corruption, the U.S. is playing a leadership role in promoting the enforcement and monitoring not only of the OECD Anti-Bribery Convention, but also: the Inter-American Convention Against Corruption, the Council of Europe Criminal Law Convention Against Corruption, the Stability Pact Anti-Corruption Compact for Southeast Europe, and the Financial Action Task Force. We are actively engaged in the United Nations negotiations for a global anti-corruption convention. In addition, the United States provides technical assistance and financial support for countries that are implementing their commitments under the conventions and regional instruments listed above. We also furnish assistance for the countries involved in the Asian Development Bank-OECD Anticorruption Initiative for the Asia-Pacific region, and emerging governance efforts in Africa, South America and the Middle East.

Conclusion

Five years into implementation of the OECD Convention, the U.S. government's principal goal is to encourage other signatories to undertake more rigorous enforcement. The low incidence of serious inquiry into allegations of bribery of foreign officials by companies based in the OECD countries to date is disappointing. While several OECD Convention Parties reportedly are investigating allegations, the matters have not yet progressed to the prosecution stage. The U.S. government

continues to receive reports that bribery of foreign public officials still influences the awarding of contracts in many countries. The U.S. (through the Department of Justice and the Securities and Exchange Commission) remains the world leader in prosecuting the bribery of foreign public officials. This is not because U.S. firms are more likely to bribe foreign officials, but because of our commitment to vigorous enforcement of our criminal laws.

To address the serious challenge of achieving more robust enforcement, the U.S. government is working with other Convention countries at the OECD and bilaterally to encourage discussion of the mechanics of investigating and prosecuting transnational bribery cases. To this end, we will explore a variety of ways to engage them on a practical level, including technical exchanges and informal capacity building to reach out to countries whose prosecutors have not had much experience in developing antibribery cases and taking them to court. Some governments already have approached us bilaterally for information and assistance. We will seek opportunities to bring prosecutors and investigators together to provide networking opportunities and build effective professional contacts. Our outreach efforts also will be aimed at encouraging prosecutors to participate in OECD peer review meetings and other Convention-related work.

The U.S. government remains firm in its commitment to reduce and eliminate the bribery of foreign public officials. We will encourage our OECD partners to renew their own commitment under the Convention to fight this global problem by investigating allegations of bribery and prosecuting cases, when appropriate. Our collective efforts to secure effective enforcement of the Convention are essential to the promotion of good governance, rule of law and sustainable development throughout the world.

Ratification Status

The Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the Antibribery Convention) entered into force on February 15, 1999ⁱ for 12 of the then 34 signatories.ⁱⁱ With the adoption by Turkey in January 2003 of legislation to implement the Antibribery Convention, all 35 signatories now have implementing legislation (see Table 1). While Ireland adopted legislation to implement the convention in July 2001, as of June 7, 2003, the government of Ireland still had not deposited its instrument of ratification with the OECD and remains the only signatory not a party to the Convention. Irish authorities expect ratification by October 2003, after the Irish “extradition order” has been amended.

Since our 2002 report to Congress, three signatories completed their domestic processes to implement the Convention: Brazil, Chile, and Turkey. The legislation of these parties is scheduled to be reviewed by the OECD Working Group on Bribery in June 2003, October 2003 and January 2004, respectively. The OECD Working Group on Bribery assessments concluded up to June 2003 can be viewed at www.oecd.org/oecd/pages/home/displaygeneral/0,3380,EN-document-31-nodirectorate-no-6-16889-31,00.html and through a web-link on the U.S. Commerce Department’s Trade Compliance Center Web site at www.tcc.mac.doc.gov/cgi-bin/doit.cgi?226:54:458690964:17.

The OECD Working Group on Bribery reviewed Ireland’s legislation at its plenary session on June 12-14, 2002; a U.S. government assessment appears in Chapter 2 of this report. We expect to include U.S. government assessments of the legislation of Brazil, Chile, and Turkey in the 2004 report to Congress.

The following information is an update on the internal legislative processes completed by Brazil, Chile, and Turkey to enact implementing legislation since our 2002 report to Congress. This information is based on data obtained from U.S. embassies and reports from the signatories themselves to the OECD, the latter of which is publicly available at the OECD Web site referred to earlier in this chapter.

Brazil

Draft implementing legislation was approved by the president and submitted to Congress on February 20, 2001. The bill was approved by the Federal Chamber of Deputies in October 2001, and it was submitted for discussion by the Senate on November 1, 2001. The Senate approved Law no. 10.467/2002 on June 6, 2002, which was signed by the president on June 10, 2002, and entered into force upon publication in the Official Gazette on June 11, 2002.

Chile

A bill to implement the Antibribery Convention was submitted to parliament in December 2001, with a request by the executive in March 2002 that the bill be given urgency status. The bill was passed by the Chamber of Deputies in July 2002 and the Senate in September 2002. The bill was published in the Official Gazette and entered into force the first week of October 2002.

Turkey

Draft implementing legislation was approved by the Ministry of Justice and the prime minister, and it was submitted to Parliament on November 3, 2000. It was approved by the Justice Commission in 2001. The legislation was adopted by Parliament on January 2, 2003, and it entered into force upon publication in the Official Gazette on January 11, 2003.

the importance of effectively enforcing national laws that implement the Convention. For example, on May 31, 2003, in his keynote speech to participants at the Third Global Forum on Fighting Corruption and Safeguarding Integrity (Global Forum III), hosted by the government of the Republic of Korea, in Seoul, Commerce Secretary Donald L. Evans urged Parties to take effective steps to rigorously enforce their anti-bribery laws. Recognizing that acts of bribery most often occur on foreign soil and that proactive efforts must be undertaken to help level the playing field for U.S. companies competing for international contracts, Commerce Under Secretary for International Trade Grant Aldonas directed the senior commercial officers attending a May 2003 training seminar to report credible allegations of bribery by foreign competitors. U.S. agencies will also continue to encourage the U.S. and foreign private sectors to support the Convention through corporate compliance programs.

Efforts to Encourage Implementation and Enforcement

Efforts over the past few years by the United States to encourage signatories to adopt implementing legislation and complete their ratification procedures have been successful. Personal involvement by the secretaries of Commerce, State, and the Treasury over the past few years to promote the prompt implementation of the Antibribery Convention has produced results, together with peer pressure applied in the OECD Working Group on Bribery. All 35 signatories have adopted legislation to implement the Convention and are now in a position to prosecute cases of bribery under their jurisdiction.

Our current monitoring focuses on the enforcement of implementing laws. The secretaries of commerce, state, and the treasury, as well as senior officials of these agencies, have used a variety of opportunities to comment on

i. Article 15 of the Antibribery Convention states that the Convention shall enter into force on the sixtieth day following the date upon which five of the ten countries, which have the ten largest shares of OECD exports and which represent by themselves at least 60 percent of the combined total exports of those ten countries, have deposited their instruments of acceptance, approval, or ratification with the OECD Secretariat. For each signatory depositing its instrument after such entry into force, the Convention shall enter into force on the sixtieth day after deposit of its instrument.

ii. On November 5, 2001, Slovenia became the 35th signatory to the Convention, 60 days after it deposited its instrument of accession with the OECD Secretariat.

Ratification Status of Signatory Countries to the OECD Anti-Bribery Convention (As of June 7, 2003)

Signatory Country	Ratified	Legislation Approved	Instrument of Ratification Deposited With OECD Secretariat ¹	Convention Enters Into Force
Total: 35	Total: 35	Total: 32	Total: 34	Total: 34
Argentina	October 18, 2000	November 1, 1994 ⁴	February 8, 2001	April 9, 2001
Australia	October 18, 1999	June 17, 1999	October 18, 1999	December 17, 1999
Austria	April 1, 1999	October 1, 1998 ²	May 20, 1999	July 19, 1999
Belgium	June 9, 1999	April 3, 1999 ²	July 27, 1999	September 25, 1999
Brazil	August 6, 2000	August 24, 2000 ⁵	October 23, 2000	
Bulgaria	June 3, 1998	January 15, 1999	December 22, 1998	February 15, 1999
Canada	December 17, 1998	December 10, 1998	December 17, 1998	February 15, 1999
Chile	March 8, 2001	April 18, 2001 ⁵	June 17, 2001	
Czech Republic	December 20, 1999	April 29, 1999	January 21, 2000	March 21, 2000
Denmark	March 30, 2000	March 30, 2000	September 5, 2000	November 4, 2000
Finland	October 9, 1998	October 9, 1998	December 10, 1998	February 15, 1999
France	May 25, 1999	June 30, 2000	July 31, 2000	September 29, 2000
Germany	November 10, 1998	September 10, 1998	November 10, 1998	February 15, 1999
Greece	November 5, 1998	November 5, 1998	February 5, 1999	February 15, 1999
Hungary	December 4, 1998	December 22, 1998	December 4, 1998	February 15, 1999
Iceland	August 17, 1998	December 22, 1998	August 17, 1998	February 15, 1999
Ireland	July 9, 2001	July 9, 2001		
Italy	September 29, 2000	September 29, 2000	December 15, 2000	February 13, 2001
Japan	May 22, 1998	September 18, 1998	October 13, 1998	February 15, 1999
Korea	December 17, 1998	December 17, 1998	January 4, 1999	February 15, 1999
Luxembourg	January 15, 2001	January 15, 2001	March 21, 2001	May 20, 2001
Mexico	April 21, 1999	April 30, 1999	May 27, 1999	July 26, 1999
The Netherlands	December 13, 2000	December 13, 2000	January 12, 2001	March 13, 2001
New Zealand	May 3, 2001	May 3, 2001	June 25, 2001	August 24, 2001
Norway	December 18, 1998	October 27, 1998	December 18, 1998	February 15, 1999
Poland	June 11, 2000	September 9, 2000	September 8, 2000	November 7, 2000
Portugal	March 31, 2000	June 4, 2001	November 23, 2000	January 22, 2001
Slovak Republic	February 11, 1999	September 1, 1999 ³	September 24, 1999	November 23, 1999
Slovenia	December 2000	September 6, 2001	November 5, 2001	
Spain	December 1, 1998	January 11, 2000	January 14, 2000	March 14, 2000
Sweden	May 6, 1999	March 25, 1999	June 8, 1999	August 7, 1999
Switzerland	December 22, 1999	December 22, 1999	May 31, 2000	July 30, 2000
Turkey	February 1, 2000		July 26, 2000 ⁵	
United Kingdom	November 25, 1998	1889, 1906, 1916 ⁴ February 14, 2002	December 14, 1998	February 15, 1999
United States	November 20, 1998	November 10, 1998	December 8, 1998	February 15, 1999

¹ The Convention entered into force February 15, 1999. The Convention enters into force for all other signatories on the 16th day after each signatory deposits an instrument of ratification with the OECD.

² Date legislation came into effect.

³ Date partial implementing legislation came into effect.

⁴ The U.K. initially relied exclusively on existing legislation to implement the Convention but adopted the Anti-terrorism, Crime and Security Act of 2002 on February 14, 2002, to address some of the concerns of the OECD Working Group on Bribery. On March 24, 2003, the U.K. government introduced a draft bill to modernize the existing law on corruption. Argentina relied on legislation implementing the Inter-American Convention Against Corruption. (See Chapter 2 of 2001 and 2002 reports to Congress).

⁵ Deposited instrument of ratification with legislation still being drafted or before parliament.

Review of National Implementing Legislation

Introduction

This chapter contains a review of the implementing legislation of Ireland, the only signatory to enact legislation and have it reviewed by the OECD Working Group on Bribery since our 2002 report to Congress. We hope to include U.S. government assessments for Brazil, Chile, and Turkey in our 2004 report. Updated information for Hungary, a party that amended its legislation in the past year in response to the Phase I recommendations of the working group, is also provided below.

This report was prepared following the same procedures and using the same sources as described in prior reports. The views contained in this section are those of the U.S. government agencies and staff and not necessarily those of the OECD Working Group on Bribery. The Working Group Country Reports on the implementing legislation reviewed to date are made public on the OECD Web site at www.oecd.org and are linked through the U.S. Commerce Department's Web site at www.export.gov/tcc.

We are continuing to review information on relevant legislation and to monitor the Parties' implementation and enforcement of the Convention, independently and within the OECD Working Group on Bribery. Further analysis of implementing legislation and related laws is required

for us to have a thorough understanding of how each country is attempting to fulfill its obligations to meet the convention's standards for criminalizing the bribery of foreign public officials. Equally important now that most signatories are parties to the Convention will be how countries apply and enforce their implementing legislation (see Chapter 3).

Concerns About Implementing Legislation

Based on information currently available, we remain generally encouraged by the efforts of the other parties that have implemented the Convention. However, for a number of countries, including Japan and the United Kingdom, we still have the same concerns that were listed in last year's report about how requirements have been addressed and, in some cases, the absence of specific legislative provisions to fulfill obligations under the convention. However, we understand that both Parties plan to amend their legislation soon. On March 24, 2003, the U.K. government introduced a draft bill (i.e., The Corruption Act, see www.official-documents.co.uk/document/cm57/5777/5777.pdf) to modernize the existing law on corruption. Japan too may soon introduce legislation to address weaknesses identified by the working group, including potential problems with jurisdiction over the offense and the adequacy of sanctions.

Amendments to Implementing Legislation Described in Prior Reports

In December 2001, Hungary enacted amendments providing for criminal liability for managers for bribery acts by their employees, deleting the “unlawful disadvantage” defense, increasing prison sentences for natural persons, extending the statute of limitations for certain offenses, changing the definition of foreign public officials, and reworking its laws on confiscation of assets and bribe proceeds. This legislation entered into force on April 1, 2002. In December 2001, Hungary also enacted legislation establishing the criminal liability of legal persons for any intentional breach of the criminal code, including anti-bribery provisions. This legislation will enter into force upon publication of the act for Hungary’s accession to the European Union.

Hungary should be commended for taking action to improve its implementing legislation, particularly for introducing liability for legal persons, deleting the aforementioned defense, and increasing, at least for certain offenses, the statute of limitations, issues about which we raised concerns in our 2001 report. However, we are concerned that the new Hungarian law establishing criminal liability for corporations requires that certain conditions must be met in order to impose such liability: e.g., the legal person must have realized a gain when the alleged offense was committed by a person who is not associated with the legal person, and there must be an identifiable natural person employed by or who represents the company that has allegedly committed the bribery act, and that person must be convicted. These requirements raise concerns as to whether Hungary has fulfilled its obligations under Antibribery Convention Articles 2 and 3.1. Further, this legislation is dependant upon Hungary’s accession to the European Union, and therefore it is not likely to come into effect until mid-2004 at the earliest. Another problem is that Hungary has amended its definition of foreign public officials so that it now depends on the laws of the foreign state. This raises concerns about whether all foreign public officials as defined in Article 1 of the Antibribery Convention will in every case be covered. For a more detailed description of the Hungarian amendments, see www.oecd.org/pdf/M00041000/M00041034.pdf.

U.S. Implementing Legislation: FCPA

In addition to the 1998 amendments to the Foreign Corrupt Practices Act of 1977 (FCPA) and the other actions to implement the Antibribery Convention identified in prior reports, the United States has taken the following action since our last report to implement the Convention:

On November 1, 2002, to conform to the Working Group’s Phase I recommendation, amendments to the U.S. Sentencing Guidelines were approved by Congress. The amendments adjust the sanctions for the bribery of foreign public officials to those applicable to bribery of domestic public officials.

Ireland

Ireland signed the Convention on December 17, 1997. The Irish president signed the Irish implementing legislation, The Prevention of Corruption (Amendment) Act 2001 (2001 Act), on July 9, 2001. With the exception of Section 4(2)(c), which apparently relates to domestic bribery, the 2001 Act entered into force on November 26, 2001. As of June 7, 2003, the government of Ireland still had not deposited its instrument of ratification with the OECD and remains the only signatory not a party to the convention. Irish authorities expect ratification by October 2003, after the Irish “extradition order” has been amended.

Ireland has a common law legal system. Its pre-convention corruption laws generally are contained in the Public Bodies Corrupt Practices Act of 1889 and the Prevention of Corruption Acts of 1906 and 1916, which are the same laws that the United Kingdom claimed fulfilled its obligations under the convention (see 2001 report, Chapter 2, pp 68-70, for an analysis of these acts). The Prevention of Corruption (Amendment) Act 2001 was adopted to implement fully the convention, (as well as international obligations in the European Union and the Council of Europe). Collectively, these laws are referred to as the Prevention of Corruption Acts, 1889-2001.

Overall, the Irish legislation appears to meet most of the obligations of the Convention. Perhaps the most serious concern is that Ireland does not provide for nationality jurisdiction for offenses under the Convention, although we understand it intends to do so for offenses committed by Irish officials and under anti-corruption that implements its EU obligations. Finally, as with several

other EU member states' implementing legislation for the Antibribery Convention, there is some overlap between the definitions of a foreign public official and that of an EU public official, which is troublesome as the fines for the active bribery offenses of an EU official are lower than those provided for under the Irish legislation implementing its Convention obligations.

Basic Statement of the Offense

The basic statement of the offense of bribery in the 2001 Act, section 2, provides that:

- (2) A person who:
 - (a) corruptly gives or agrees to give, or
 - (b) corruptly offers, any gift or consideration to an agent or any other person, whether for the benefit of that agent, person or another person, as an inducement to, or reward for, or otherwise on account of, the agent doing any act or making any omission in relation to his or her office or position or his or her principal's affairs or business shall be guilty of an offence.

This section replaces Section 1 of the Prevention of Corruption Act 1906. Although "gift" is not defined, "consideration" is defined in Section 2(5) of the 2001 Act as including "valuable consideration of any kind." Section 2(5) also provides that a "principal" includes an employer. According to Irish authorities, corrupt intent is required, and bribery acts made through or to intermediaries and third parties are covered. The legislation goes beyond the requirements of the Convention in that it covers both public and private sector bribery.

Jurisdictional Principles

Irish courts generally practice territorial jurisdiction. Section 6 of the 2001 Act provides that a person may be tried in Ireland for an offense under the Public Bodies Corrupt Practices Act 1889 or 1906 if any of the acts alleged to constitute the offense are committed in Ireland, notwithstanding that other acts constituting the offense were committed outside of Ireland. Ireland only provides for nationality jurisdiction in cases of international bribery where the payor is a domestic public official (see Section 7 of the 2001 Act). According to the Explanatory Memorandum accompanying the 2001 Act, this was done so that an Irish official could not avoid prosecution simply by leaving the country to engage in corrupt acts. Obviously an Irish national could do the same, so it is

unclear why nationals who are not officials are not covered. Furthermore, Ireland has provided for extraterritorial jurisdiction over Irish nationals in anti-corruption legislation implementing some EU instruments. See Section 45(2) of the Criminal Justice (Theft and Fraud Offences) Act 2001. This differential treatment would appear to conflict with the requirements of Antibribery Convention Article 4.2.

Coverage of Payor/Offerrer

The 2001 Act applies to "a person." Pursuant to Section 11 of the Irish Interpretation Act of 1937, "person" includes natural and legal persons, or "bodies corporate." Furthermore, Section 9 of the 2001 Act, concerning bodies corporate, provides:

- (1) Where an offence under the Prevention of Corruption Acts, 1889 to 2001, has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any wilful neglect on the part of a person being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.
- (2) Where the affairs of a body corporate are managed by its members, Subsection (1) shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

Coverage of Payee/Offeree

The 2001 Act provides that any person who corruptly gives, agrees to give, or offers any gift or consideration to an agent or any other person will be guilty of an offense. Public officials are covered by the definition of "agent," as amended by the 2001 Act:

- (5) In this Act "agent" includes
 - (a) any person employed by or acting for another,

[...]

 - (c)
 - (i) a member of the government of any other state,
 - (ii) a member of a parliament, regional or national,

- of any other state,
- (iii) a member of the European Parliament (other than a person who is a member by virtue of the European Parliament Elections Act, 1997),
- (iv) a member of the Court of Auditors of the European Communities,
- (v) a member of the Commission of the European Communities,
- (vi) a public prosecutor in any other state,
- (vii) a judge of a court in any other state,
- (viii) a judge of any court established under an international agreement to which the State is a party,
- (ix) a member of, or any other person employed by or acting for or on behalf of, any body established under an international agreement to which the State is a party, and
- (x) any other person employed by or acting on behalf of the public administration of any other state.

Irish authorities have explained that this list is not exhaustive and that other types of persons not listed above may fall within the definition of “agent” depending on the facts of the case.

Penalties

Under Subsection 2(4) of the 2001 Act, penalties for the basic offense of bribery vary depending on whether the case is concluded through a summary conviction or a conviction on indictment. For the former, which are tried in district court without a jury, the penalties are a fine not exceeding ,2,362.69 (approx. _3,000.00 or \$3,530.00) or imprisonment for a term not exceeding 12 months, or both. For a conviction on indictment, which is generally tried in a circuit court before a jury, the penalties are an unlimited fine or imprisonment of a term not exceeding 10 years, or both.

The penalties for both domestic and foreign bribery are the same. However, under overlapping legislation implementing Ireland’s EU obligations, the fines for bribery of EU officials are lower: five years imprisonment and/or a fine. Irish officials have explained that this overlap would only occur in certain limited circumstances.

Confiscation of proceeds is provided for under Section 9 of the Irish Criminal Justice Act, after a conviction on indictment. Pursuant to the Irish Proceeds of Crime Act 1996, civil forfeiture is also available and a criminal conviction is not a prerequisite. Apparently civil forfei-

ture is limited to property (the proceeds of the crime) valued at less than ,10,000 (approx. _12,697 or \$14,943.00).

The Irish Companies Act 1990, Section 160 provides for additional civil and administrative sanctions (e.g., court order disallowing the offender from being appointed or acting as an auditor, director or other officer in a company or disqualification for a period determined appropriate by the court). Apparently there is no statute of limitations for indictable offenses. The statute of limitations for summary offenses is six months.

Books and Records Provisions

The Irish books and records provisions are contained in the Irish Companies Act 1990. All companies are required to keep proper books and records on a continuous and consistent basis in accordance with the principles set forth in Article 8 of the Convention. In addition, external audits are required for all but small, private limited companies. Apparently there are currently no provisions in Irish corporate law relating to internal audits. The Auditing Practices Board (U.K.) creates voluntary auditing standards which are publicized in Ireland by the Institute of Chartered Accountants. The Companies Act also contains provisions on auditing requirements.

Money Laundering

The provisions on money laundering are contained in Section 31 of the Criminal Justice Act 1994, amended by Section 21 of the Criminal Justice (Theft and Fraud Offence) Act 2001. Indictable domestic and foreign bribery offenses qualify as predicate offenses for purposes of Irish money-laundering legislation. According to Irish authorities, a conviction for the predicate offense is not required

Extradition/Mutual Legal Assistance

Extradition is governed by the provisions of the Irish Extradition Acts 1965-2001. Section 8 of the Extradition Act of 1965 generally provides that Ireland may allow extradition to a foreign country where that country is a party to a multilateral extradition treaty with Ireland or under conditions of reciprocity. The Antibribery Convention would qualify as a multilateral treaty for purposes of extradition. Generally, Ireland will not extradite its nationals unless such extradition is provided for pursuant to a bilateral treaty or arrangement. It is unclear whether, in the event that Ireland refuses to extradite one of its nationals, the country would always refer the matter to its own prosecutorial authorities, as required by

Convention Article 10.3, since Ireland does not have nationality jurisdiction for acts of bribery of foreign public officials committed abroad (see discussion under Jurisdiction).

Ireland is a party to several international conventions on mutual legal assistance, and may also grant mutual legal assistance under the Criminal Justice Act 1994. Although dual criminality is usually not required for mutual legal assistance requests, dual criminality is necessary for requests concerning search and seizure, confiscation, and forfeiture. According to the Bankers Books Evidence Act 1879, authorities may by court order inspect financial institution records for the purpose of gathering evidence.

Complicity, Attempt, Conspiracy

According to the Irish Criminal Law Act 1997, Subsection 7(1), a person who aids, abets, counsels, or procures the commission of an indictable offense will be punished as a principal. Under Subsection 10(2), anyone guilty of the offense of attempt is also subject to the same punishment as a principal committing the same offense. Irish authorities have explained that conspiracy is an offense under Irish common law, and there is no distinction between attempt and conspiracy for bribery.

1. U.S. government assessments of the implementing legislation of the following twenty-seven countries appear in the 2001 report: Argentina, Australia, Austria, Belgium, Bulgaria, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Japan, Korea, Mexico, Poland, Iceland, Italy, Luxembourg, The Netherlands, Norway, the Slovak Republic, Spain, Sweden, Switzerland, and the United Kingdom. Assessments of New Zealand and Portugal appear in the 2002 report.

Review of Enforcement Measures

Enforcement of National Implementing Legislation

As of July 2003, the Convention has been in force for more than four years for 12 signatories, including five G7 countries, and for more than three years for almost two-thirds of the signatories. Although the U.S. government recognizes that achieving the Convention's goals will take time, other parties to the Convention must begin showing real progress toward bringing prosecutions under their new laws. The lack of such prosecutions is disappointing and disturbing.

The Antibribery Convention provided for systematic follow-up to monitor and promote its full implementation. As explained in greater detail below, this is a "peer review" process of two phases: Phase I, now substantially complete, evaluated the conformity of each party's laws with the requirements of the Convention; Phase II, begun in late 2001, is intended to evaluate each party's actual enforcement of its laws. Unfortunately, the Phase II review process has not proceeded as rapidly as the U.S. government expected. We believe that enforcement reviews for all parties should be completed on a cycle of no more than five years, which requires - with the present number of parties - that at least seven reviews be conducted each year. The U.S. government firmly believes

that a rigorous Phase II enforcement process is necessary to encourage parties to take the necessary steps to investigate and to prosecute unlawful conduct by their domestic corporations. For that reason, we have encouraged all participants to provide adequate resources to the OECD Working Group on Bribery for it to conduct these reviews and to increase the number of such reviews undertaken each year significantly. In December 2002, we met with some success when the OECD Council agreed to re-allocate OECD budget funds to support peer review of convention enforcement.

In remarks during the closing plenary session of Global Forum III, hosted by the Republic of Korea, in Seoul, Secretary Donald L. Evans pointed out that to give life to commitments embodied in multilateral anti-corruption instruments like the Antibribery Convention, they must be backed with concrete actions. Such concrete actions include following up on all credible allegations of bribery, initiating prosecutions when evidence supports the allegations, and imposing sanctions that are effective, proportionate, and dissuasive. It is the responsibility of each party to implement and enforce its national laws independently, as well as to be proactive and not await Phase II review or other public scrutiny of its enforcement regimes. At this time, we are not aware of any con-

victions obtained by parties to the Convention for violations of laws implementing the Convention, other than the cases the United States has prosecuted. We understand, however, that allegations of bribery payments to foreign officials are being pursued by certain parties, although we are aware of only one country that has brought charges thus far (in a case that has not yet gone to trial). We recognize that as with investigations in this country, the confidentiality of the procedures prior to prosecution may be a factor that does not allow us to obtain a full appreciation of the actions being undertaken by parties to investigate such cases. Nonetheless, all parties should take concrete steps in response to credible reports of bribery of foreign public officials.

With regard to reports in the general media of alleged bribery of foreign officials, we recognize that they are not always sufficiently credible to lead to an official response. Nevertheless, in many cases they should prompt prosecutors at least to make preliminary inquiries. Furthermore, prosecution by a government whose foreign officials were bribed is another avenue prosecutors in party states should utilize to develop information on potential violations. There have been several recent, well-publicized criminal prosecutions in Africa and Asia implicating companies from parties to the Convention. These are examples of cases in which prosecutions under laws implementing the Convention may result. The U.S. government expects and encourages each Party to follow such cases and bring its own prosecutions if warranted. This is essential both to fulfill its obligations under the Convention as well as to help support the rule of law in other countries.

Enforcement in the United States

In the United States, Foreign Corrupt Practices Act (FCPA) investigation of bribery of foreign public officials and prosecution are subject to the same rules and principles that govern any other federal criminal or civil investigation. To ensure that uniform and consistent prosecutorial decisions are made in this particular area, all criminal investigations under the FCPA are supervised by the Criminal Division of the U.S. Department of Justice.

In the 26 years since the passage of the FCPA, the U.S. Department of Justice has brought 38 criminal prosecutions, seven civil enforcement actions under the anti-bribery provisions of the FCPA, and 19 foreign bribery criminal cases utilizing federal criminal statutes other than

the FCPA. In addition, the U.S. Securities and Exchange Commission (SEC) has brought several civil enforcement actions under the anti-bribery provisions as well as hundreds of cases under the books and records provisions. Since July 1, 2002, the following enforcement actions have been instituted or concluded:

- *United States v. Robert Richard King and Pablo Barquero Herndandez* (W.D. Mo. 2001)
- *United States v. Richard Halford* (W.D. Mo. 2001)

• *United States v. Albert Reitz* (W.D. Mo. 2001).
A grand jury in Kansas City, Missouri, returned an indictment in July 2001 charging a Kansas City businessman and a Costa Rican national with inter alia conspiracy and substantive violations of the FCPA in connection with an alleged scheme to bribe officials and political parties in Costa Rica to obtain a concession to build a new commercial port and resort. The defendant was convicted at trial in June 2002, and his appeal is pending. In addition, two co-conspirators pleaded guilty to conspiring to violate the FCPA. The remaining defendant, the Costa Rican agent, remains a fugitive.

- *United States v. Joshua Cantor* (S.D.N.Y. 2001)
- *In the matter of American Banknote Holographics Inc.* (SEC 2001)

• *SEC v. Morris Weissman, et al.* (S.D.N.Y. 2001).
In a series of related criminal and administrative proceedings in July 2001, the U.S. Department of Justice and the SEC brought enforcement actions against an officer of American Bank Note Holographics (ABNH) and its former parent company, American Bank Note Inc., both of which were public companies, in connection with bribes paid to a Saudi Arabian official to obtain a contract to manufacture holographics for Saudi currency. Cantor, the president of ABNH, pleaded guilty to a felony violation of the FCPA, and ABNH agreed to a cease and desist order and agreed to pay a \$75,000 penalty based on its conduct. In April 2003, Cantor agreed to a settlement of an SEC complaint that imposed a 10-year ban on his acting as an officer or director of any public company; sentencing in his criminal case is still pending.

- *United States and SEC v. KPMG Siddharta Siddharta & Harsano and Sonny Harsano* (S.D. Tex. 2001)

In the Matter of Baker Hughes Inc. (SEC 2001)

- *SEC v. Eric L. Mattson and James W. Harris* (S.D. Tex. 2001).

In a series of related civil and administrative proceedings in September 2001, the U.S. Department of Justice and the SEC brought enforcement actions against Baker Hughes, two former company officers, and its for-

eign-based accountants in connection with the payment of a bribe to an Indonesian tax official to obtain favorable tax treatment. The foreign accounting firm and one of its partners agreed to a consent judgment. In addition, Baker Hughes agreed to a cease and desist order. The FCPA anti-bribery charges in the SEC complaint against the company's former chief financial officer and controller were dismissed by the trial judge on the basis of *U.S. v. Kay* (see below). The remaining books and records and internal controls charges were dismissed on a joint motion of the parties. The SEC has filed an appeal from the dismissal of the FCPA anti-bribery charges.

- *United States v. David Kay and Douglas Murphy* (S.D. Tex. 2001).

In April 2002, a district judge in Houston, Texas, dismissed an indictment charging the former chief executive officer and a vice-president of American Rice Inc., with violating anti-bribery provisions of the FCPA by paying alleged bribes to Haitian customs officials to accept false bills of lading and other importation documents, thereby resulting in lower customs duties. The district court found that the alleged conduct was not "to obtain or retain business" as required by the FCPA. The government appealed this decision, and it was argued before the Court of Appeals for the Fifth Circuit in March 2003. A decision is expected shortly.

- *United States v. Gautam Sengupta* (D.D.C. 2002)
- *United States v. Ramendra Basu* (D.D.C. 2002)

The defendants in these matters, both former officials of the World Bank, pleaded guilty to, among other charges, violations of the FCPA for receiving kickbacks and facilitating a bribe to a Kenyan official by a Swedish company. Sentencing is pending.

- *United States v. Richard G. Pitchford* (D.D. C. 2002).

In August 2002, Pitchford, the country manager of the Central Asia American Enterprise Fund for Turkmenistan, pleaded guilty to conspiracy, theft from a government program, and a violation of the FCPA in connection with bribes paid to a British official to assist a British company to obtain a contract from the fund. Pitchford was sentenced to a year and a day in prison, three years of supervised release, and a \$400,000 fine.

- *United States v. Syncor Taiwan* (S.D. Cal. 2002)
- *SEC v. Syncor International Corp.* (D.D.C. 2002)
- *In the Matter of Syncor International Corp.* (SEC 2002).

In a series of related criminal, civil, and administrative actions in November and December 2002, the U.S. Department of Justice and the SEC brought enforcement actions against Syncor International Corporation

and one of its foreign subsidiaries in connection with bribes paid to doctors employed by government hospitals in Taiwan, Mexico, Belgium, France, and Luxembourg. In the criminal case, the foreign subsidiary was sentenced to a \$2,000,000 fine. In the civil case, the parent company agreed to pay a \$500,000 fine. In the administrative case, the company agreed to retain an outside consultant to advise it on developing adequate internal controls and compliance mechanisms.

- *United States v. James H. Giffen* (S.D.N.Y. 2003).

In April 2003, a grand jury sitting in New York returned an indictment against James H. Giffen, a U.S. national who acted as an advisor to the Republic of Kazakhstan and its officials in connection with the sale of rights to Kazakh oil fields and pipelines. The indictment charged Giffen with conspiracy, FCPA violations, mail and wire fraud, money laundering, and subscribing to false tax returns. In the addition, the indictment sought the forfeiture of \$84 million laundered through 11 Swiss bank accounts. Trial in this matter is pending.

Department of Justice Opinion Procedure

The U.S. Department of Justice has also provided assistance to American businesses engaged in international business transactions. Since 1980, the department has issued 39 opinions in response to requests from U.S. businesses stating whether it would take enforcement action if the requestors proceeded with actual proposed transactions. In 2003, the department issued one opinion:

In Opinion Release 03-01, the U.S. Attorney General opined that a U.S. company, which in the process of acquiring another U.S. company had discovered illicit payments, could proceed with the transaction without fear of FCPA prosecution for pre-acquisition payments in the circumstances described in the release. These circumstances included the disclosure to the SEC and the Department of Justice of the payments, both companies' cooperation with the ensuing investigations, and implementation of rigorous compliance programs.

U.S. Efforts to Promote Public Awareness

For many years prior to the adoption of the Antibribery Convention, the U.S. government sought to educate the business community and the general public about international bribery and the FCPA. As a result, U.S. companies engaged in international trade are generally aware

of the requirements of U.S. law. Since U.S. ratification of the Convention and the passage of the International Anti-Bribery and Fair Competition Act of 1998 (IAFCA), the U.S. government has increased efforts to raise public awareness of U.S. policy on bribery and initiatives to eliminate bribery in the international marketplace.

Officials of the Commerce, State, and Justice departments continue to be in regular contact with business representatives to brief them on new developments on anti-bribery issues and discuss problems they encounter in their operations. This close relationship and cooperation with the private sector was a contributing factor to the successful Phase II review of the United States conducted in March 2002 by examiners from two member countries and the OECD Secretariat. Additional information on public awareness programs of the U.S. government can be found in last year's report at www.export.gov/tcc.

Efforts of Other Signatories

Rigorous enforcement of these new laws against bribery of foreign public officials is one part of the process in making the Convention a success. Another very important element is raising public awareness of the laws. While businesses are responsible for understanding and complying with the laws in the environments in which they operate, each party to the Convention bears the responsibility of publicizing that bribes are no longer an acceptable way to obtain an international contract and that serious criminal penalties can be imposed upon those who bribe or attempt to bribe foreign public officials.

Based on reports from U.S. embassies and public sources of information, we are discouraged by the lack of attention being given to this very important implementation issue. While some countries have taken steps to promote awareness of the Convention, most have not. This unfortunate situation is being confirmed in most of the results of the enforcement reviews undertaken so far. The United States has the most extensive public outreach program of any signatory to the Convention and appreciates the value provided by such activities. We urge other parties to the Convention to undertake active public awareness programs. Such programs should include as an integral component advocacy of effective corporate compliance programs for businesses to ensure compliance with national laws implementing the Convention. As Secretary Donald L. Evans expressed in his remarks at Global Forum III, corporate governance is one aspect of corporate stewardship. Responsible corporate stewards are moral business leaders who strengthen demo-

cratic capitalism by working for the growth and success of both their companies and the communities in which they do business. Corporations, working in free markets, can spread the essential values of honest competition and the rule of law. Full participation by governments, business, and civil society is critical to making the Antibribery Convention a effective deterrent to corruption.

Monitoring Process for the Convention

Monitoring is crucial for promoting effective implementation and enforcement of the Convention by signatory countries. The OECD has in place a comprehensive monitoring process that provides for input from the private sector and nongovernmental organizations. In addition to the OECD process, the U.S. government has its own intensive monitoring process, of which this annual report to the Congress is an integral part. The United States continues to encourage all signatories to participate fully in the OECD monitoring process and establish their own internal mechanisms for ensuring follow-through on the Convention by governments and the private sector. We also encourage other signatories to devote sufficient resources to ensure that monitoring is effective.

OECD Monitoring

The OECD has established a rigorous process to monitor implementation and enforcement of the Convention and of the 1997 Revised Recommendation of the Council on Combating Bribery in International Business Transactions (revised recommendation).

For a detailed description of the framework for monitoring the Convention, which includes a summary of the modalities for the process, refer to this chapter in the 2001 report to Congress at www.export.gov/tcc. The modalities are also available on the OECD's Web site at www.oecd.org/oecd/pages/home/displaygeneral/0,3380,EN-document-86-nodirectorate-no-6-7218-31,00.html for Phase I and www.oecd.org/oecd/pages/home/displaygeneral/0,3380,EN-document-86-nodirectorate-no-6-7223-31,00.html for Phase II. The questionnaires for both Phase I and II are also available on the OECD site at www.oecd.org/EN/documents/0,,EN-documents-86-nodirectorate-no-26-no-31,00.html.

Through October 2002, the OECD Working Group on Bribery completed reviews of the implementing legislation of 32 signatory countries. These individual Work-

ing Group country reviews and annual reports to Ministers are posted on the OECD Web site at www.oecd.org/EN/document/0,,EN-document-86-nodirectorate-no-3-16889-31,00.html and www.oecd.org/EN/documents/0,,EN-documents-88-nodirectorate-no-11-no-31,00.html, respectively.

The U.S. government assessment of the implementing legislation of Ireland, reviewed since our last report, and an update of Hungary's implementation, are included in Chapter 2 of this report. For U.S. government assessments for those reviewed before then, refer to the 2001 and 2002 reports to Congress available at www.export.gov/tcc.

Phase II of the Monitoring Process

Phase II of the monitoring process—the goal of which is to study the structures in place to enforce the laws and rules implementing the Convention and revised recommendation and to assess their application in practice—began in late 2001 with a review of Finland. Since then, the United States, Germany, Iceland, and Bulgaria have been reviewed. The U.S. government (Department of Justice and SEC) participated as lead examiners in the Phase II enforcement review for Canada, which was presented to the working group at its June 2003 meeting. The Phase II reviews of France and Norway are scheduled for October and December 2003, respectively.

Phase II Review of Germany and Iceland

Following are brief summaries highlighting various issues raised in enforcement reviews of Germany and Iceland, undertaken at the October and December 2002 OECD Working Group on Bribery meetings, respectively. For the more detailed analyses and recommendations of the working group, see www.oecd.org/EN/document/0,,EN-document-31-nodirectorate-no-3-16889-31,00.html.

Although Bulgaria also underwent a Phase II evaluation this year, its working group report will not be posted until later this year. Therefore, in deference to the working group, our report will contain a summary of Bulgaria's Phase II report next year.

Germany

The German statute implementing the Convention, the Act on Combating Bribery of Foreign Public Officials (ACIB), entered into force in February 1999. Although no cases have been brought, German authorities contend

that they are investigating several cases at this time. The fact that no prosecutions have been brought, combined with Germany's federal system, made it difficult to conduct substantive analysis concerning several aspects of Germany's enforcement efforts. The working group encouraged Germany to institute procedures to enhance coordination and monitoring of foreign bribery investigations and prosecutions.

Although there have been some outreach efforts to increase public awareness of the ACIB and the Convention in Germany, the working group recommended that more needed to be done. According to the report, codes of conduct are being more frequently used by German businesses. The working group noted that the government could do more to educate the private sector on the ACIB and promote such codes, particularly for small and medium-sized enterprises. The working group also recommended that Germany institute a program of training law enforcement officials concerning foreign bribery investigations.

One of the main problems discussed in the report concerns Germany's lack of criminal liability for legal persons, as Germany provides for liability for legal persons under its Administrative Offenses Act. During the on-site review, the examiners found that, at least in some major areas such as Berlin and Frankfurt, administrative fines have rarely been imposed on legal persons for corruption offenses. The examiners also noted that the lack of criminal liability for legal persons could negatively affect Germany's ability to secure mutual legal assistance. Another problem with the liability regime for legal persons is that the standard of prosecutorial discretion differs under the Administrative Offenses Act for prosecution of legal persons, in that it is discretionary, compared with the mandatory standard for prosecution of natural persons in the criminal context. To resolve this problem, the working group recommended that Germany issue guidelines on the use of prosecutorial discretion. Additionally, the working group questioned whether the available monetary sanctions for legal persons were effective, proportionate, and dissuasive in practice, as in principle they cannot exceed 1 million euro.

Iceland

Iceland's statutes that implement the convention (Act No. 147/1998, amending its General Penal Code, and Act No. 144/1998, on the Criminal Liability of Legal persons), entered into force on December 30, 1998.

Iceland has prosecuted very few cases for domestic bribery and no international bribery cases. There is a general perception in Iceland that there is little corruption. Its main industries, fishing and fish processing, are not ones that typically involve bribery of foreign public officials. As there have been no international bribery cases, the working group recommended that several issues be revisited as case law develops. These include the treatment of bribes paid through intermediaries and to third parties, the definition of foreign public official, criminal liability of legal persons, jurisdiction, and several other elements of the offense.

The working group suggested that the government of Iceland do more to promote awareness of the Convention to its business community and to relevant government agencies. According to interviews with the private sector, although companies claimed that there is very little corruption on the part of Icelandic businesses, they admitted that it is difficult for them to monitor and be responsible for the actions of their agents. Private sector respondents also expressed the view that, although they do not actively seek to bribe others, they are sometimes solicited by foreign public officials seeking bribes. The working group therefore recommended that the government of Iceland engage the private sector in a dialogue about these concerns and issue policy guidance.

Working Group Resources

With Phase II monitoring now under way, the working group has moved to a critical phase in making the Convention an effective instrument - ensuring rigorous enforcement of the convention's obligations. However, the monitoring activities of the working group are resource intensive and, until recently, the OECD has not had adequate funds available to carry out peer reviews. The United States takes monitoring of the Convention very seriously and has committed significant resources to this endeavor, at times through substantial supplemental funding for the working group. A recent example is the \$100,000 grant the U.S. Department of Commerce provided to the OECD Working Group on Bribery specifically for Phase II enforcement reviews. The United States also demonstrates leadership by urging other OECD countries to provide financial support for anti-bribery work. In December 2002, the OECD Council agreed to re-

allocate OECD budget funds to support peer review of Convention enforcement. The decision was taken after the United States highlighted the critical importance of increasing resources to monitor implementation of the Convention.

Monitoring of the Convention By the U.S. Government

Monitoring implementation and enforcement of the Convention has been a priority for the U.S. government since it entered into force. The U.S. government is committed to ensuring full compliance with agreements with our trading partners. At the U.S. Commerce Department, monitoring compliance with the Convention - and international agreements generally - remains a high priority. Other U.S. government agencies are also actively involved and making important contributions. The Commerce, State, Justice, and Treasury departments as well as the staff of the SEC continue to cooperate as an interagency team to monitor implementation and enforcement of the Convention. Each agency brings its own expertise and has a valuable role to play.

In the year ahead, the U.S. Department of Commerce, in close collaboration with the State and Justice departments and other agencies, will continue its rigorous monitoring of the Convention, with particular emphasis on monitoring the enforcement by Parties of their laws implementing the Convention. We will enhance our efforts to urge the relevant authorities in each party to address all credible allegations of bribery of foreign public officials. When information is received relating to acts of bribery that may fall within the jurisdiction of other Parties to the Convention, the information will be forwarded, as appropriate, to national authorities for action. The U.S. government recognizes that acts of bribery most often occur on foreign soil and that proactive efforts must be undertaken to help level the playing field for U.S. companies competing for international contracts. To support these efforts Commerce Under Secretary for International Trade Grant D. Aldonas spoke to more than 225 Commercial Service staff members at a recent training session and directed senior commercial officers to report to Washington credible allegations of bribery by foreign competitors. In addition, as a party to the Convention, we must take

preventive action when we learn that bribes are being solicited in international tenders. We will seek to engage other parties to take coordinated action when such allegations are made and approach such governments to let them know our companies cannot pay bribes, will not pay bribes, and that such tenders must be decided on the commercial merits of proposals.

The United States continues to have the most intensive monitoring program of any signatory country. Our system is transparent and open to input from the private sector and non-governmental organizations. We encourage other signatory countries to undertake similar programs and expect them to find it in their interest to ensure that other parties are complying with the obligations of the convention, so that we all make it a truly meaningful, multilateral anti-corruption instrument.

Laws Prohibiting Tax Deductibility of Bribes

The OECD Council made an important contribution to the fight against bribery in 1996 by recommending that member countries that had not yet disallowed the tax deductibility of bribes to foreign public officials should reexamine such treatment with the intention of denying deductibility. This recommendation was reinforced in the OECD Council's 1997 Revised Recommendation on Combating Bribery in International Business Transactions, which laid the foundation for negotiation of the OECD Antibribery Convention. All 35 signatories to the Convention agreed to implement the OECD Council's recommendation on denying the tax deductibility of bribes.

On October 17, 2002, New Zealand adopted legislation to deny the deductibility of bribes paid to foreign and domestic public officials in the conduct of business. Now, each of the 35 signatories to the Anti-bribery Convention have affirmed that bribes paid to foreign public officials are not tax deductible.² Some parties deny tax deductibility of bribes explicitly in their laws, while others only permit deductions for expenses specified in their tax laws or related to proper business activity.

Despite the important positive steps taken by signatories to the Convention, we remain concerned that tax deductibility of bribes to foreign public officials may still

be continuing. This continued practice may be due to one or more of the following reasons: the legal framework may disallow the deductibility of only certain types of bribes or bribes by companies above a certain size; the standard of proof for denying a tax deduction (e.g., the requirement of a conviction for a criminal violation) may make effective administration of such laws difficult; the relevant laws may not be specific enough to deny deductibility of bribes effectively in all circumstances; and overly broad categories for allowable deductions may permit disguised bribe payments.

Furthermore, Phase II reviews by the OECD Working Group on Bribery have identified potential weaknesses in application of rules denying deductibility. For example, tax examiners may not be sufficiently aware of the laws or policies requiring the denial of tax deductibility of bribes to foreign public officials, especially where such prohibitions are not explicitly disallowed under domestic laws. Also, tax examiners may not be sufficiently trained in detecting the payment of bribes to foreign officials. Working Group proposals to ameliorate such concerns include the express denial of deductibility of bribes in a country's relevant laws and increasing awareness of tax authorities as to the non-tax deductibility of bribes through the issuance of guidelines and the provision of special training courses to assist in the detection of pay-

ment of bribes to foreign officials. In this regard, the Bribery Awareness Handbook, published by the OECD Committee on Fiscal Affairs, is a useful manual for tax officials to assist in the detection of bribes.

Whatever the nature of the legal or administrative gaps that perpetuate the practice of tax deductibility of bribes to foreign public officials, signatories to the Convention are obligated to stop this practice. Further, all signatories must recognize that enactment of rules denying deductibility is only the first step. Careful monitoring must continue to ensure that the rules are actually enforced, and the United States will continue to play an active role in that effort.

Subsequent Efforts To Strengthen the Convention

At the time the Antibribery Convention was negotiated, the United States sought to include coverage of bribes paid to political parties, party officials, and candidates for public office. These channels of bribery and corruption are covered in the U.S. Foreign Corrupt Practices Act (FCPA). However, they are not specifically covered in the Convention. Although the United States did not succeed in that effort, signatories to the Convention did agree that a number of issues related to coverage should be studied further. In all, five issues relating to corruption and the Convention were identified at the December 1997 OECD Council meeting for additional examination: bribery acts in relation to foreign political parties; advantages promised or given to any person in anticipation of that person becoming a foreign public official; bribery of foreign public officials as a predicate offense for money-laundering legislation; the role of foreign subsidiaries in bribery transactions; and the role of offshore centers in bribery transactions. These issues have been discussed to varying degrees over the past several years. However, although several countries have stated that they would make bribery of foreign public officials a predicate offense for their respective money-laundering legislation, irrespective of whether their systems made domestic bribery of public officials a predicate, no agreement has been reached to expand the scope of the convention to explicitly cover any of these mat-

ters. For a more detailed discussion of these issues, please refer to prior reports to Congress available at www.export.gov/tcc and www.state.gov.

While expanding the scope of the Convention to include bribes to political parties and candidates is of particular importance to the U.S. government, unfortunately, to date, we have not persuaded other Convention Parties to include this broader coverage of bribery in the Convention. The United States remains concerned that failure to prohibit the bribery of political parties, party officials, and candidates for office may create a loophole through which bribes may be directed at the present time and in the future. Although no such loophole exists in the FCPA, our experience shows that firms do attempt to obtain or retain business with bribes of this nature. In fact, the first case brought under the FCPA involved a payment to a political party and party officials. In the fight against corruption, bribes to political parties, party officials, and candidates are no less pernicious than bribes to government officials. Press accounts continue to indicate that corporations based in countries that are parties to the Convention may still attempt to use this mode of bribery to obtain or retain business in foreign markets.

However, at this time the U.S. government firmly believes that the focus of the OECD Working Group on

Bribery and parties to the Antibribery Convention should be on enforcement of the Convention, especially given the resource constraints faced by the group. We believe that individual action by each party to prosecute cases of foreign bribery and collective action by all parties to encourage such action is needed to keep the Antibribery Convention a credible multilateral anticorruption instrument. Absent rigorous action to pursue legitimate allegations of bribery, and to prosecute cases where warranted, a real danger exists that the Antibribery Convention will soon be viewed as irrelevant. Companies based in countries that do not prosecute may continue to bribe with impunity, recognizing that the political will or the technical capacity does not exist at home to investigate their actions.

The U.S. government believes that the five aforementioned issues identified by the OECD Council continue to merit the attention of the working group, but not until long-term funding for the working group has been secured, and not until we are certain that adequate resources are available to support rigorous peer monitoring of enforcement. In the year ahead, we will continue to work with other delegations to identify effective ways to preserve the integrity of the Convention and the important work of the OECD Working Group on Bribery. Those discussions will include periodic reviews of the appropriate scope for the expansion of the Antibribery Convention.

Adding New Signatories to the Convention

The OECD Working Group on Bribery and the United States believe that a targeted expansion of Antibribery Convention membership could help to eliminate bribery of foreign public officials in international business transactions. The United States expects that a small number of additional qualified applicants may satisfy the conditions for accession to the Convention in the coming years. The working group is considering options to refine the existing criteria and procedures for accession. That work is expected to continue through the end of 2003. The United States is working closely with other members of the working group to develop constructive and practical approaches in response to the desire of other countries to be associated with the Antibribery Convention, the group and its work. The United States continues to advocate a careful and deliberate approach to enlargement. The primary focus should be to attract countries that are important global market participants and whose accession to the convention would bring significant mutual benefit. The financial resources of the working group are not sufficient to permit a rapid expansion of membership without reducing OECD staff support for priority activities like peer review of convention enforcement.

Development and Application of Accession Criteria

Article 13.2 of the Antibribery Convention provides that it shall be open to accession by non-signatories that have become full participants in the OECD Working Group on Bribery. In addition, OECD Commentaries on the Convention permit non-signatories to participate in the working group provided that they accept the 1997 Revised Recommendation of the Council on Combating Bribery in International Business Transactions and the 1996 OECD Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials. In October 1999, the working group reaffirmed the use of traditional OECD criteria for participation by non-member countries in OECD work as set forth in an OECD Council resolution: they should be “major players” whose inclusion would provide “mutual benefit.” Using these criteria, the working group approved the accession application of Slovenia in April of 2001, and Slovenia acceded to the convention in September 2001. In its report to the OECD Council on Slovenia’s accession, the working group noted that resource constraints would have to be factored into future decisions on expansion. In addition, the group cautioned that the recommendation for immediate, full participation of Slovenia should not be regarded as a precedent for future candidates. The United States

and other members of the working group expressed special interest in seeking more regional diversity among prospective signatories.

In 2001 and 2002, the working group reviewed the applications of Croatia, Estonia, Latvia, Lithuania, and Romania after the OECD Council requested a “technical opinion” of their qualifications for accession to the Convention. By the end of 2002, the working group had held several extensive discussions about the five candidates for accession but was not able to reach a consensus for any recommendation. Based on this experience of trying to apply the existing criteria for accession, countries in the working group decided that further work was needed to develop a shared understanding of how to apply them.

In December 2002, the OECD Council instructed the working group “to develop, on an urgent basis, recommendations consistent with the provisions of the Convention, on institutional, structural and financial arrangements that will preserve the effectiveness of the Convention and assure its openness to new parties.” The work began in early 2003, and the working group held an ad hoc special session in mid-April to discuss structural and financial aspects of enlargement. This work continues, and the working group is scheduled to deliver a progress report to the OECD Council during the summer of 2003.

Also in December 2002, the OECD Council decided to invite representatives of Estonia to participate in the Working Group on Bribery. The group will reassess the application of Estonia as a full participant in the working group in light of the results of its current deliberations on institutional arrangements.

1 The following summary of Ireland’s legislation should not be relied on as a substitute for a direct review of applicable legislation by persons contemplating business activities relevant to these provisions.

2 As part of the monitoring process on the Convention and the OECD Council’s recommendation, the OECD gathers information on signatories’ laws implementing the recommendation on tax deductibility. Information on current and pending tax legislation regarding the tax deductibility of bribes is available on the OECD Web site www.oecd.org/EN/home/0,,EN-home-626-nodirectorate-no-no-no-31,00.html. The information on the Web site is based entirely on reports that the signatories themselves provide to the OECD Secretariat.

Senate Resolution of Advice and Consent of July 31, 1998

Senate of the United States

IN EXECUTIVE SESSION

July 31, 1998

Resolved, *(two-thirds of the Senators present concurring therein),*

That the Senate advise and consent to the ratification of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, adopted at Paris on November 21, 1997, by a conference held under the auspices of the Organization for Economic Cooperation and Development (OECD), signed in Paris on December 17, 1997, by the United States and 32 other nations (Treaty Doc. 105-43), subject to the understanding of subsection (a), the declaration of subsection (b), and the provisos of subsection (c).

(a) UNDERSTANDING. — The advice and consent of the Senate is subject to the following understanding, which shall be included in the instrument of ratification and shall be binding on the President:

EXTRADITION. — The United States shall not consider this Convention as the legal basis for extradition to any country with which the United States has no bilateral extradition treaty in force. In such cases where the United States does have a bilateral extradition treaty in force, that treaty shall serve as the legal basis for extradition for offenses covered under this Convention.

(b) DECLARATION. — The advice and consent of the Senate is subject to the following declaration:

TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988, and Condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe, approved by the Senate on May 14, 1997.

(c) PROVISOS.— The advice and consent of the Senate is subject to the following provisos:

(1) ENFORCEMENT AND MONITORING. — On July 1, 1999, and annually thereafter for five years, unless extended by an Act of Congress, the President shall submit to the Committee on Foreign Relations of the Senate, and the Speaker of the House of Representatives, a report that sets out:

(A) RATIFICATION.— a list of the countries that have ratified the Convention, the dates of ratification and entry into force for each country, and a detailed account of U.S. efforts to encourage other nations that are signatories to the Convention to ratify and implement it.

(B) DOMESTIC LEGISLATION IMPLEMENTING THE CONVENTION.— a description of the domestic laws enacted by each Party to the Convention that implement commitments under the Convention, and an assessment of the compatibility of the laws of each country with the requirements of the Convention.

(C) ENFORCEMENT.— an assessment of the measures taken by each Party to fulfill its obligations under this Convention, and to advance its object and purpose, during the previous year. This shall include:

(1) an assessment of the enforcement by each Party of its domestic laws implementing the obligations of the Convention, including its efforts to:

(i) investigate and prosecute cases of bribery of foreign public officials, including cases involving its own citizens;

(ii) provide sufficient resources to enforce its obligations under the Convention;

(iii) share information among the Parties to the Convention relating to natural and legal persons prosecuted or subjected to civil or administrative proceedings pursuant to enforcement of the Convention; and

(iv) respond to requests for mutual legal assistance or extradition relating to bribery of foreign public officials.

(2) an assessment of the efforts of each Party to:

(i) extradite its own nationals for bribery of foreign public officials;

(ii) make public the names of natural and legal persons that have been found to violate its domestic laws implementing this Convention; and

(iii) make public pronouncements, particularly to affected businesses, in support of obligations under this Convention.

(3) an assessment of the effectiveness, transparency, and viability of the OECD monitoring process, including its inclusion of input from the private sector and non-governmental organizations.

(D) LAWS PROHIBITING TAX DEDUCTION OF BRIBES.— an explanation of the domestic laws enacted by each signatory to the Convention that would prohibit the deduction of bribes in the computation of domestic taxes. This shall include:

(i) the jurisdictional reach of the country's judicial system;

(ii) the definition of "bribery" in the tax code;

(iii) the definition of "foreign public official" in the tax code; and

(iv) the legal standard used to disallow such a deduction.

(E) FUTURE NEGOTIATIONS.— a description of the future work of the Parties to the Convention to expand the definition of "foreign public official" and to assess other areas where the Convention could be amended to decrease bribery and other corrupt activities. This shall include:

(1) a description of efforts by the United States to amend the Convention to require countries to expand the definition of "foreign public official," so as to make illegal the bribery of:

(i) foreign political parties or party officials,
(ii) candidates for foreign political office,

and

(iii) immediate family members of foreign public officials.

(2) an assessment of the likelihood of successfully negotiating the amendments set out in paragraph (1), including progress made by the Parties during the most recent annual meeting of the OECD Ministers; and

(3) an assessment of the potential for expanding the Convention in the following areas:

(i) bribery of foreign public officials as a predicate offense for money laundering legislation;

(ii) the role of foreign subsidiaries and offshore centers in bribery transactions; and

(iii) private sector corruption and corruption of officials for purposes other than to obtain or retain business.

(F) EXPANDED MEMBERSHIP.— a description of U.S. efforts to encourage other non-OECD member to sign, ratify, implement, and enforce the Convention.

(G) CLASSIFIED ANNEX.— a classified annex to the report, listing those foreign corporations or entities the President has credible national security information indicating they are engaging in activities prohibited by the Convention.

(2) MUTUAL LEGAL ASSISTANCE. — When the United States receives a request for assistance under Article 9 from a country with which it has in force a bilateral treaty for mutual legal assistance in criminal matters, the bilateral treaty will provide the legal basis for responding to that request. In any case of assistance sought from the United States under Article 9, the United States shall, consistent with U.S. laws, relevant treaties and arrangements, deny assistance where granting the assistance sought would prejudice its essential public policy interests, including cases where the Responsible Authority, after consultation with all appropriate intelligence, anti-narcotic, and foreign policy agencies, has specific information that a senior government official who will have access to information to be provided under this Convention is engaged in a felony, including the facilitation of the production or distribution of illegal drugs.

(3) SUPREMACY OF THE CONSTITUTION.—Nothing in the Convention requires or authorizes legislation or other action by the United States of America that is prohibited by the Constitution of the United States as interpreted by the United States.



Attest:

Gary A. Sisco

Secretary.



OECD Documents

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Websites Relevant to the Convention, Anticorruption, Ethics, Transparency, and Corporate Compliance Programs

United States Government

Department of Commerce

- Commerce Home Page: (www.doc.gov).
- Market Access and Compliance/Trade Compliance Center: Annual Reports to Congress on Implementation of the OECD Bribery Convention, Trade Complaint Hotline, Trade and Related Agreements Database (TARA), Exporter's Guides, Market Access Reports, Market Monitor, and "Market Access and Compliance-Rule of Law for Business Initiatives" (www.export.gov/tcc).
- Also, Country Commercial reports and guides, trade and export-related information (www.ita.doc.gov/ita_home/itacnreg.htm); trade counseling and other services in other countries (1-800-USA-TRADE); Office of the Chief Counsel for International Commerce, Information on Legal Aspects of International Trade and Investment, The Anti-Corruption Review, the FCPA, and other anticorruption materials (www.ita.doc.gov/ogc/occic).

Department of State

- Information on the OECD Bribery Convention and First Global Forum on Fighting Corruption Materials; documents related to the OECD Bribery Convention (www.state.gov/www/issues/economic/bribery.html).
- First Global Forum on Fighting Corruption and Safeguarding Integrity, Washington, D.C., February 1999 (www.state.gov) and Second Global Forum, The Hague, The Netherlands, May 28–31, 2001 (www.gfcorruption.org). A copy of the First Global Forum Final Conference Report and Guiding Principles for Fighting Corruption and Safeguarding Integrity among Justice and Security Officials can also be purchased from the U.S. Government Printing Office (ISBN 0–16–050150–4); Country Reports, Economic Practices and Trade Practices (www.state.gov).

Department of Justice, Fraud Section

- Comprehensive information on the FCPA, legislative history of FCPA, 1998 amendments, opinion procedures, and international agreements (www.usdoj.gov/criminal/fraud.html).

Office of Government Ethics (OGE)

- Information on ethics, latest developments in ethics, ethics programs, and informational and educational materials including OECD Public Service Management (PUMA) (www.usoge.gov/).

Department of the Treasury

- Information on money laundering, customs, and international financial institutions (www.treas.gov).

Securities and Exchange Commission (SEC)

- Information about SEC enforcement, actions, Complaint Center, and further information for accountants and auditors (www.sec.gov).

Agency for International Development (USAID)

- Center for Democracy and Governance, USAID's Efforts on Anticorruption, Handbook on Fighting Corruption (www.info.usaid.gov/democracy/anticorruption).

Inter-Governmental Organizations

Organization for Economic Cooperation and Development (OECD)

- Anticorruption-OECD AntiBribery Convention. Country compliance assessment reports (www.oecd.org/EN/documents/0,,EN-documents-88-3-no-3-no-88,00.html).
- ANCORREB, the OECD Anticorruption Ring Online, a collection of materials on effective policies and practices (www.oecd.org/EN/home/0,,EN-home-124-nodirectorate-no-no-no-31,00.html).

Financial Action Task Force on Money Laundering (FATF)

- (www1.oecd.org/fatf/).

International Criminal Police Organization (INTERPOL)

- (www.interpol.int).

Council of Europe (COE)

- COE Anticorruption Convention, related programs, and resources (www.coe.int).

Organization for Security and Cooperation in Europe (OSCE)

- Charter for European Security, Rule of Law and Fight Against Corruption (www.osce.org).

Stability Pact for South Eastern Europe

- Special Coordinator of the Stability Pact for South Eastern Europe, Anticorruption Initiative and Compact of the Stability Pact (<http://www.stabilitypact.org>).

Organization of American States (OAS)

- The Fight Against Corruption in the Americas; Inter-American Convention Against Corruption; resolutions of the General Assembly, studies, and supporting documents (<http://www.oas.org/juridico/english/FightCur.html>).

Middle East and North Africa (MENA)

- The World Bank Group (<http://wbln0018.worldbank.org/mna/mena.nsf>).
- World Bank Institute, Anticorruption (<http://www.worldbank.org/wbi/governance/links.htm>).

Asia-Pacific Economic Cooperation (APEC)

- Information on the Transparency Initiative, investment, government procurement, and customs (www.apecsec.org.sg).

Association of Southeast Asian Nations (ASEAN)

- (www.aseansec.org).

United Nations—Centre for International Crime Prevention (CICP)

- Global Program Against Corruption (www.UNCJIN.org/CICP/cicp.html).
- UN Development Program (UNDP), Management Development and Governance Division (<http://magnet.undp.org/>).

World Trade Organization (WTO)

- Working Group on Transparency in Government Procurement Practices (www.wto.org).

The Global Corporate Governance Forum

- An OECD and World Bank Initiative to help countries improve corporate governance standards and corporate ethics (www.worldbank.org/html/extdr/extme/2217.htm).
- OECD Principles of Corporate Governance (www1.oecd.org/daf/governance/principles.htm).

World Customs Organization (WCO)

- (www.wcoomd.org). Please note that the WCO web site has been redesigned. This new version of the site only supports Internet Explorer 5.0 or Netscape 6.0 or later versions of these browsers.

International Financial Institutions

The World Bank

- Public Sector Group, World Bank Anticorruption Strategy, information on preventing corruption in WB projects, helping countries reduce corruption, and supporting international efforts (www1.worldbank.org/publicsector/anticorrupt/).
- Economic Development Institute (EDI), World Bank Anticorruption Diagnostic Surveys (www.worldbank.org/wbi/governance).

International Monetary Fund (IMF)

- Codes of Good Practices in Monetary and Financial Policies (www.imf.org/external/np/mae/mft/index.htm).

Inter-American Development Bank (IDB)

- (www.iadb.org).

Asian Development Bank (ADB)

- (www.adb.org).

African Development Bank (AfDB)

- (www.afdb.org).

European Bank for Reconstruction and Development (EBRD)

- (www.ebrd.com/new/index.htm).

Other Organizations

U.S. Chamber of Commerce (USCOC)

- Center for International Private Enterprise (CIPE), an affiliate of the USCOC, information on corporate governance and anticorruption (www.cipe.org).

International Chamber of Commerce (ICC)

- Rules of Conduct and Bribery, ICC Commercial Crime Services, and due diligence (www.iccwbo.org).

Transparency International (TI)

- TI Corruption Index and Bribe Propensity Index; TI Source Book on anticorruption strategies and other international initiatives by governments, NGOs, and the private sector (www.transparency.org).
- 10th International Anti-Corruption Conference, Prague 2001 (www.10iacc.org).
- 11th International Anti-Corruption Conference, Seoul 2003 (www.11iacc.org).

U.S. International Council for Business

- (www.uscib.org).

The Conference Board

- Information on corporate ethics (www.conference-board.org).

American Bar Association (ABA)

- Taskforce on International Standards on Corrupt Practices (www.abanet.org/intlaw/divisions/public/corrupt.html).
- ABA-Central and East European Law Initiative (CEELI) (www.abanet.org/ceeli/).

Ethics Resource Center

- (www.ethics.org).

COSO

- The Committee of Sponsoring Organizations of the Treadway Commission (www.coso.org). The COSO (“Treadway Commission”) is a volunteer private sector organization consisting of the five major financial professional associations dedicated to improving the quality of financial reporting through business ethics, effective internal controls, and corporate governance. The five associations are:

The American Accounting Association (AAA) (<http://accounting.rutgers.edu/raw/aaa>);

The American Institute of Certified Public Accountants (AICPA) (www.aicpa.org/index.htm);

The Financial Executives Institute (FEI) (www.fei.org);

The Institute of Internal Auditors (IIA) (www.theiia.org); and

The Institute of Management Accountants (IMA) (www.imanet.org).

The Association of Government Accountants (AGA)

- (www.agacgfm.org).
- Sites Directory for U.S. and International Accounting Associations and State CPA Societies (<http://taxsites.com/associations2.html>).

International Organization of Supreme Audit Organizations (INTOSAI)

- (www.intosai.org).

Global Coalition for Africa (GCA)

- Principles to Combat Corruption in Africa Countries; Collaborative Frameworks to Address Corruption (www.gca-cma.org/ecorrtion.htm).

South Asian Association for Regional Cooperation

- (www.saarc.org).

Pacific Basin Economic Council (PBEC)

- An association of senior business leaders, which represents more than 1,200 businesses in 20 economies in the Pacific Basin region (www.pbec.org).

Americas’ Accountability/ Anti-Corruption (AAA) Project

(<http://www.respondanet.com/english/index.htm>).

Anti-Corruption Network for Transition Economies

(www.nobribes.org).

Inter-Parliamentary Union

(www.ipu.org).

World Forum on Democracy

(www.fordemocracy.net).

National Democratic Institute for International Affairs (NDI)

(www.ndi.org).

The International Republican Institute (IRI)

(www.iri.org).

International Center for Journalists

(www.icjf.org).

World Association of Newspapers

(www.fiej.org).

The Carter Center

(www.cartercenter.org).

The Asia Foundation

(www.asiafoundation.com).

The National Endowment for Democracy (NED)

(www.ned.org).

Websites With Country-Specific Convention-Related Legislation

- Implementing legislation of many Parties can be downloaded directly from the OECD website: (www.oecd.org/oecd/pages/home/displaygeneral/0,3380,EN-document-86-nodirectorate-no-6-7252-31,00.html).
- The OECD also provides non-html references to some countries corruption-related legislation at: <http://www1.oecd.org/daf/nocorruptionweb/law/index.htm>.
- Several countries also have posted legislation on their government websites. Legislation and/or other related information of the following countries is available from one or more of these sources.

Argentina

- Ministry of Justice: www.jus.gov.ar.

Australia

- The government response (tabled in the Senate on March 11, 1999) to the Treaties Committee Report on the OECD Convention and the Draft Implementing Legislation may be found at: <http://www.aph.gov.au/hansard/hanssen.htm> (select March 11, 1999, and go to p.2,634).
- The Criminal Code Amendment (Bribery of Foreign Public Officials) Bill 1999 is at: <http://www.aph.gov.au/parlinfo/billsnet/main.htm> (open “old bills”). The Bill’s Explanatory Memorandum is also on that site.

Austria

- The German text of the Austrian implementing legislation (Strafrechtsänderungsgesetz 1998 BGBl No. I 153) is available in pdf format on the OECD website, and at the Austrian government website, <http://www.ris.bka.gv.at>.

Belgium

- Belgian Ministry of Justice: www.just.fgov.be.
- The text of the law passed on February 10, 1999, is available in French at: http://194.7.188.126/justice/index_fr.htm, (to find the text, choose the Moniteur published on 23.03.1999).

It is also available in French in pdf format on the OECD website:
(<http://www.oecd.org/pdf/M00007000/M00007659.pdf>).

Brazil

- The English text of two relevant legal documents is available in pdf format on the OECD website:
Law no. 9.613, passed on March 3, 1998,
—<http://www.oecd.org/pdf/M00007000/M00007660.pdf>;
Decree 1171 of June 1994
—<http://www.oecd.org/pdf/M00007000/M00007662.pdf>

Bulgaria

Council of Ministers: www.government.bg.

Canada

- Access to the legislation can be obtained through the website for the Department of Justice/Ministère de la Justice (<http://laws.justice.gc.ca/en/index.html>).
- Alternatively, the Act concerning the Corruption of Foreign Public Officials is located at: http://www.parl.gc.ca/36/1/parlbus/chambus/house/bills/government/S-21/S-21_3/90062be.html.
- The English text is also available in pdf format on the OECD website:
(<http://www.oecd.org/pdf/M00007000/M00007666.pdf>).

Czech Republic

- Ministry of Justice: www.mvcr.cz/english.html.

Denmark

- Implementing legislation can be found on the Department of Justice web site (in Danish only) at: http://www.folketinget.dk/Samling/19981/lovforslag_oversigtsformat/L232.htm.

Finland

- Implementing legislation can be found on the government website (in Finnish and Swedish) at: <http://www.valtioneuvosto.fi/vn/liston/base.lsp?k=en>.

- Excerpts showing amendments to the Finnish Penal Code are also available in pdf format on the OECD website (<http://www.oecd.org/pdf/M00007000/M00007668.pdf>).

France

- The draft law modifying the penal code and the penal procedure code relating to combating bribery and corruption can be found on the website of Legifrance (in French only) at <http://www.legifrance.gouv.fr/citoyen/index.ow>.
- The French text of the legislation is also available in pdf format on the OECD website (<http://www.oecd.org/pdf/M00007000/M00007670.pdf>).

Germany

The following are available in pdf format on the OECD website:

- The English (unofficial translation <http://www.oecd.org/pdf/M00007000/M00007675.pdf>) and German texts (<http://www.oecd.org/pdf/M00007000/M00007674.pdf>) of the implementing legislation dated September 10, 1998.
- The relevant criminal code (in German – <http://www.oecd.org/pdf/M00007000/M00007677.pdf>, and in unofficial English translation – <http://www.oecd.org/pdf/M00007000/M00007680.pdf>).
- The Administrative Offence Act (in German – <http://www.oecd.org/pdf/M00007000/M00007681.pdf>, and in unofficial English translation – <http://www.oecd.org/pdf/M00007000/M00007682.pdf>).

Greece

- The following are both available in pdf format on the OECD website:
The unofficial French translated text of the implementing legislation dated November 11, 1998, (<http://www.oecd.org/pdf/M00007000/M00007683.pdf>);
The English text of Greek law No. 2331 on money laundering of August 1995 (<http://www.oecd.org/pdf/M00007000/M00007684.pdf>).

Hungary

- The English text of the relevant implementing legislation is available in pdf format on the OECD website (<http://www.oecd.org/pdf/M00007000/M00007685.pdf>).

Iceland

- The following are both available in pdf format on the OECD website:
The English text of the Icelandic Prevention of Corruption (Amendment) Act (2001, no. 27 of 2001) (<http://www.oecd.org/pdf/M00024000/M00024024.pdf>);
The relevant discussions (<http://www.irlgov.ie/bills/28/bills/2000/0100/default.htm>).

Ireland

- Legislation pending in the Irish parliament can be viewed or tracked at: www.Irlgov.ie/oireachtas.

Italy

- Law number 231 which implements the Convention can be found at www.parlamento.it/parlam/leggi/deleghe/01231dl.htm.
- Legislation to ratify the Convention (Law of 29 September n. 300, published in Ordinary Supplement 176-L to the Official Journal of 25 October 2000 n. 250) is available in English in pdf format (<http://www.oecd.org/pdf/M00007000/M00007688.pdf>).
- Other relevant legislation can be downloaded on AnCorR web: (<http://www.oecd.org/dafnocorruptionweb>).

Japan

- An unofficial English translation of the Japanese implementing legislation (the amended Unfair Competition Act, adopted on September 18, 1998, is available in pdf format (<http://www.oecd.org/pdf/M00007000/M00007689.pdf>) on the OECD website.

Korea

- An English translation of the Korean implementing legislation (The Act on Preventing Bribery of Foreign Public Officials in International Business Transactions) is available in pdf format on the OECD website: <http://www.oecd.org/pdf/M00007000/M00007690.pdf>.

Luxembourg

- The implementing legislation of 15 January 2001 is available in pdf format (<http://www.oecd.org/pdf/M00007000/M00007692.pdf>).

(Official title: Loi du 15 janvier 2001 portant approbation de la Convention de l'OCDE du 21 novembre 1997 sur la lutte contre la corruption d'agents publics étrangers dans les transactions commerciales internationales et relatif aux détournements, aux destructions d'actes et de titres, à la concussion, à la prise illégale d'intérêts, à la corruption et portant modification d'autres dispositions légales).

Mexico

- The Mexican Penal Code is available on the Government's website in Spanish (<http://www.cddhcu.gob.mx/leyinfo/9>).
- The Mexican Criminal Code is available in English in pdf format (<http://www.oecd.org/pdf/M00024000/M00024324.pdf>).
- Secretariat of Public Evaluation (SECODAM) website with general corruption development information: www.secodam.gob.mx.

Netherlands

- The law ratifying the OECD Bribery Convention (<http://www.oecd.org/pdf/M00024000/M00024322.pdf>).
- The law implementing the OECD Bribery Convention are available in Dutch in pdf format (<http://www.oecd.org/pdf/M00024000/M00024323.pdf>).

New Zealand

- The following are both available in pdf format:
The relevant implementing legislation (<http://www.oecd.org/pdf/M00007000/M00007753.pdf>);
The Crimes (Bribery of Foreign Public Officials) Amendment Act 2001 (<http://www.oecd.org/pdf/M00007000/M00007756.pdf>).

Norway

- The implementing legislation (Amendments to the Norwegian Penal Code of May 22, 1902, chapter 2, para. 128) is available in pdf format on the following websites:
The OECD website (<http://www.oecd.org/pdf/M00007000/M00007759.pdf>);
The Norwegian government website (www.lovdato.no/all).

Portugal

- Law no. 13/2001 transposing to national law the OECD Bribery Convention is available in English – <http://www.oecd.org/pdf/M00024000/M00024105.pdf> (pdf format).
- Furthermore, the law 108/2001 of 28 november 2001, amending the rules governing the offense of trading in influence and corruption, is available in the following translations:
Portuguese (<http://www.oecd.org/pdf/M00024000/M00024111.pdf>); and
French (<http://www.oecd.org/pdf/M00024000/M00024112.pdf>).

Slovak Republic

- The main provisions implementing the OECD Bribery Convention can be found in the Criminal Code of the Slovak Republic of which the relevant extracts are available in pdf format
(<http://www.oecd.org/pdf/M00024000/M00024008.pdf>).
- Other relevant provisions are available on AnCorR web
(<http://www1.oecd.org/daf/nocorruptionweb/Law/oecd.htm#SlovakRepublic>).

Slovenia

- The following are available in Slovenian:
The Slovenian Penal Code of 1994
(http://www2.gov.si/zak/Zak_vel.nsf/067cd1764ec38042c12565da002f2781/a1675736157f9c0ec1256628002fda68?OpenDocument);
The law amending the Penal Code (including on corruption issues) of 1999
(http://www2.gov.si/zak/Zak_vel.nsf/067cd1764ec38042c12565da002f2781/c12563a400338836c125673e002de2df?OpenDocument).
- The translation into English of the relevant excerpts of these laws are available in pdf
(<http://www.oecd.org/pdf/M00024000/M00024167.pdf>).
- Furthermore, excerpts of the Criminal Procedure Act of Slovenia (as of December 2000) are available in English (<http://www.oecd.org/pdf/M00024000/M00024171.pdf>).

- The Slovenian version of this law can be found on the legal resource centre of the Slovenian Government (*Kratika ZKP and ZKP A–D*), (http://www.sigov.sldz/en/aktualno/spremljanje_zakonodajesprejeti_zakoni/sprejeti_zakoni.html).
- The Liability of Legal Persons for Criminal Offences Act of 1999 is available in Slovenian (http://www2.sigov.si/zak/Zak_vel.nsf/067cd1764ec38042c12565da002f2781/c12563a400338836c12567a8003552bd?OpenDocument).
- The following legislation is available in French on the OECD website:
Modification of the Swiss Penal Code and the Amendments to the Swiss Penal Code (<http://www.oecd.org/pdf/M00007000/M00007765.pdf>); and
The Law of April 19, 1999, authorizing the ratification of the Convention (<http://www.oecd.org/pdf/M00007000/M00007767.pdf>).
- The Recueil Systématique du Droit Fédéral is available in pdf-format in:
French (<http://www.admin.ch/ch/f/rs/rs.html>);
German (<http://www.admin.ch/ch/d/sr/sr.html>); and
Italian (<http://www.admin.ch/ch/i/rs/rs.html>).

Spain

- Implementing legislation accessible via the following websites:
Spanish presidency with links to ministries: www.la-moncloa.es;
Ministry of Justice: www.mju.es;
Ministry of Economy: www.mineco.es;
Official state bulletins: www.boe.es.
- The provisions to the Spanish Penal Code, implementing the Convention, is available in pdf format on the OECD website (<http://www.oecd.org/pdf/M00007000/M00007760.pdf>).

Sweden

- The Swedish implementing legislation is available in pdf format on the OECD website (<http://www.oecd.org/pdf/M00007000/M00007762.pdf>).

Switzerland

- Swiss laws can be found on Recueil Systématique du Droit Fédéral (available in French, German and Italian only) at (<http://www.admin.ch/ch/f/rs/rs.html>). Search for the Swiss Penal Code of December 21, 1937, which will soon be amended to comply with the Convention.

United Kingdom

- The following are available on the Government's website:
The UK Anti-Terrorism, Crime and Security Act 2001 (2001 Chapter 24) – Part 12: Bribery and Corruption (<http://www.uk-legislation.hmso.gov.uk/acts/acts2001/20010024.htm>); and
The corresponding explanatory notes (<http://www.parliament.the-stationery-office.co.uk/pa/cm200102/cmbills/049/2002049.htm>).
- The Government's statement on the consolidation and amendment of the Prevention of Corruption Acts 1889-1996 and the UK whitepaper on government proposals for the reform of criminal law of corruption in England and Wales are available on the webpage of the UK home office on public life (http://www.homeoffice.gov.uk/new_indexes/public.htm).